

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Disciplinary Action No. 01– DP– 71

In the Matter of

EDWARD J. LABARRE,

Applicant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JUL 03 2003
GREGORY C. LANGHAM,
CLERK

DISCIPLINARY PANEL’S ORDER REINSTATING ATTORNEY

This matter comes before the Disciplinary Panel on the “Motion for Reinstatement to the Bar of This Federal District Court” filed by Applicant Edward J. LaBarre. Pursuant to D.C.COLO.LCivR 83.5N, the court’s Committee on Conduct has investigated the application and recommended that it be denied. The committee reasons that the application is premature because, according to D.C.COLO.LCivR 83.5N, an attorney who has been suspended or disbarred may apply for readmission or reinstatement only at the end of his “disciplinary period.” In the committee’s view, Mr. LaBarre’s “disciplinary period” has not expired because, effective August 1, 2002, the California Supreme Court disciplined Mr. LaBarre by suspending him from the practice of law for one year but staying execution of the suspension on the condition that he successfully complete a two-year probationary period. Thus, the committee suggests, Mr. LaBarre cannot apply for reinstatement until the date his California probationary period expires or, if he fails probation and thus precipitates the one-year period of suspension, the date the suspension expires —whichever is earlier. The Disciplinary Panel, contrariwise, has concluded that, under this court’s local rules governing attorney conduct, the pertinent

“disciplinary period” ended when the United States Court of Appeals for the Ninth Circuit reinstated Mr. LaBarre to its bar effective April 16, 2002. He is therefore eligible for reinstatement to the bar of this court.

FACTS

On October 18, 2001, the Colorado Supreme Court suspended the applicant for ninety days, effective November 18, 2001. The suspension arose out of a “no contest” plea to a misdemeanor charge of obstructing government operations. The charge, in turn, arose from applicant’s suggestions to a witness concerning the content of the witness’s testimony, suggestions which were recorded for the authorities on a “wire” worn by the witness. On January 28, 2002, the Colorado Supreme Court reinstated applicant’s license, effective February 17, 2002, the expiration of the ninety-day period.

Meanwhile, on October 19, 2002, the Colorado Supreme Court notified this court that it had suspended Mr. LaBarre. According to D.C.COLO.LCivR 83.3F, “[i]t is presumed that discipline by another court against a member of this court’s bar is appropriate” unless the attorney seeks and obtains relief from the presumption on one of the grounds specified in the rule. Mr. LaBarre did not seek relief from the presumption. Accordingly, by operation of rule 83.3F, he was suspended from this court’s bar effective November 18, 2001.

Mr. LaBarre’s Colorado suspension was also reported to the State Bar of California, of which he is a member. Pursuant to stipulation, the California Supreme Court on August 1, 2002, suspended applicant for one year but stayed execution of the suspension on the condition that applicant be on probation for two years. As of this date, applicant is on this “probationary” status in California. It is this status which causes this court’s Committee on

Conduct to question whether Mr. LaBarre is “in good standing” in California and whether his “disciplinary period” has expired.

Meanwhile, a fourth court weighed in on Mr. LaBarre’s status. Acting pursuant to Fed. R. App. P. 46(b), the United States Court of Appeals for the Ninth Circuit, on January 15, 2002, noted that Mr. LaBarre had been suspended by the Colorado Supreme Court and ordered him to show cause why he should not be suspended from the Ninth Circuit bar. After Mr. LaBarre responded, the Ninth Circuit suspended Mr. LaBarre for ninety days and ordered that the “suspension shall run concurrent with the 90-day suspension imposed by the Supreme Court of Colorado.” The Ninth Circuit further noted that Mr. LaBarre could apply for reinstatement “upon his reinstatement to the practice of law by the Supreme Court of Colorado.” On April 16, 2002, the Ninth Circuit entered an order reinstating Mr. LaBarre to its bar.

DISCUSSION

This court’s local rules concerning attorney conduct and discipline distinguish between (1) suspension or disbarment and (2) other, less serious forms of discipline. Formal discipline of any type affects the attorney’s “good standing” and must be reported by the attorney to this court. Assuming that the attorney complies with the self-reporting requirement, then the less serious forms of discipline (public censure, for example) are noted on the attorney’s record but would not prevent him from continuing to practice before this court. Disbarment or suspension, however, additionally preclude the attorney from practicing in this court or continuing as an attorney of record in pending cases. The suspension or disbarment lasts until

the Disciplinary Panel reinstates the attorney. D.C.COLO.LCivR 83.3E, 83.5N. The pertinent rule provides, in full, as follows:

E. *Member in Good Standing.* An attorney admitted to this bar must remain in good standing in all courts where admitted. No attorney *may practice* before the bar of this court or *continue to be an attorney of record in any pending case* who is under *suspension for any period* or has been *disbarred* by any court where previously admitted. In the event a member of the bar of this court has been *formally disciplined* by any court, it is the duty of that attorney to give immediate written notice to the clerk of this court of the date and terms of discipline, the name and address of the court imposing the discipline, and the date of that court's action. Failure to provide notice or to cease practicing before the bar of this court as required by this section are themselves separate causes for disciplinary action. Application for reinstatement following suspension or disbarment under this rule shall be made in accordance with the terms of D.C.COLO.LCivR 83.5N.

(Emphasis supplied.)

The question presented by Mr. LaBarre's application for reinstatement is whether the discipline imposed by the California Supreme Court should carry the consequences of a suspension or the consequences of lesser forms of discipline. If the discipline is treated as a suspension, then the Committee on Conduct is correct: Mr. LaBarre's "disciplinary period" in California has not ended, and local rule 83.5N precludes his application at this time. If the California discipline falls into the "less serious" category, then it would be noted on his record in this court but would not preclude him from appearing as counsel in cases before the court. The only relevant "disciplinary periods" would be the period of suspension by the Colorado Supreme Court, which expired on February 17, 2002, and the period of suspension imposed by the Ninth Circuit, which expired no later than April 16, 2002.

The Disciplinary Panel interprets local rules 83.3E and 83.5N to mean (1) that an attorney is disbarred or suspended in another jurisdiction only when the discipline imposed actually curtails his right to practice or appear in the disciplining jurisdiction for any period of time and (2) that his “disciplinary period” in that jurisdiction ends when the curtailment of his right to practice ends. The language of the rule, which speaks of suspension “for any period,” tends to support this view. The interpretation is also consistent with the presumption in rule 83.3F that the discipline imposed by this court should ordinarily reflect that imposed by the court whose discipline has caused the attorney to fall from good standing. A suspension which is stayed in its entirety and does not curtail the attorney’s practice in the disciplining jurisdiction should likewise not ordinarily curtail his right to practice before this court.

Applying its interpretation of the local rules to Mr. LaBarre’s case, the Disciplinary Panel first notes that he was suspended from practicing in this court effective November 18, 2001, by operation of local rule 83.3F. On February 17, 2002, the Colorado Supreme Court reinstated him, and his “disability period” in that court ended. There appears to have been a window of time during which Mr. LaBarre might theoretically have sought reinstatement to this court’s bar, but that window seems to have closed when the Ninth Circuit imposed its delayed suspension on March 14, 2002. The Disciplinary Panel assumes, for purposes of this discussion, that, under Fed. R. App. P. 46(b), the Ninth Circuit’s order to show cause did not restrict Mr. LaBarre’s practice before that court and that it was the order of suspension on March 14, 2002 which did curtail his practice before that court. In any event, Mr. LaBarre’s “disability period” with the Ninth Circuit clearly ended no later than April 16, 2002, when he

was reinstated by that court.* The Disciplinary Panel thus concludes that the Ninth Circuit's discipline imposes no present impediment to Mr. LaBarre's application for reinstatement to practice before this court.

In California, Mr. LaBarre was suspended for one year, but execution of the suspension was stayed in its entirety. Mr. LaBarre continues to be on probation there. California's discipline has resulted in no curtailment of Mr. LaBarre's practice there. Thus, it does not constitute a suspension for purposes of administering local rule 83.3E, and it imposed no "disciplinary period" for purposes of administering local rule 83.5N. The Disciplinary Panel thus concludes that California's discipline never imposed an impediment to Mr. LaBarre's application for reinstatement to practice before this court.

CONCLUSION AND ORDER

Upon the foregoing findings and conclusions, it is

ORDERED as follows:

1. Edward J. LaBarre's application for reinstatement is hereby GRANTED, and he is reinstated to practice in this court.

*The Disciplinary Panel perceives some ambiguity in the proceedings before the Ninth Circuit. The Ninth Circuit's order suspending Mr. LaBarre specified that its ninety-day suspension was to be concurrent with the ninety-day suspension imposed by the Colorado Supreme Court. Use of this language would seem to connote that the "concurrent" suspension would have ended February 17, 2002, when Mr. LaBarre's Colorado suspension ended. This literal result does not appear to have been what the Ninth Circuit intended, however, since it also required Mr. LaBarre to apply for reinstatement. The only issue which the Disciplinary Panel needs to decide is that Mr. LaBarre's "disability period" with the Ninth Circuit ended *no later than* April 16, 2002.

2. The disciplinary clerk will record Mr. LaBarre's status in California on the records of this court. Pursuant to D.C.COLO.LCivR 83E, Mr. LaBarre shall promptly notify this court of any change in his status.

Dated this _____ day of July, 2003.

BY THE DISCIPLINARY PANEL OF THE COURT:

EDWARD W. NOTTINGHAM, Judge

WILEY Y. DANIEL, Judge

WALKER D. MILLER, Judge